THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 15th day of December ,2006

W.P.No.2733 of 1998

Between :

M/s. Doon Valley Rice Limited,
rep. by its Director Sri R.Gopal
Gupta, R/o Karnal, Haryana State … Petitioner

and

Commissioner of Civil Supplies (Appeals) &
Ex-Officio Secretary to Government,
Food, Civil Supplies & Consumer Affairs
Department, Hyderabad & others … Respondents

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ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to G.O.Ms.No.530, Food, Civil Supplies and Consumer Affairs (CS.I) Department, dated 30-8-1997 of the 1st respondent modifying the Proceedings No.VIO/CS/689/96, dated 25-7-1996 of the 2nd respondent and quash the same as arbitrary and illegal.

Petitioner is a firm exporting para-boiled rice from India to Bangladesh and other neighbouring countries. Earlier, it was purchasing rice and sending it to Kandla Port in Gujarat State for export. As it was a very heavy port, it had to wait for the berth for its turn for about six months; as a result of which, the rice, which was procured, was lying idle in the godown and it was loosing business on account of delay. The other Ports in the West Coast like Bombay and Goa are equally busy ports. Therefore, they searched for a Port where there is no congestion and waiting time and preferred Kakinada, which is a developing Port. It wanted to export the rice from there to Bangladesh. In pursuance of that, it had purchased rice from within the State as well as outside the State after obtaining due permission from the Commissioner of Civil Supplies. It stored stocks of rice worth about Rs.28,00,000/- by procuring from Orissa, Madhya Pradesh and Andhra Pradesh in the godown near the Port at Kakinada. While so,

the 3rd respondent-Inspector of Police inspected the godown on 13-3-1996 and seized para-boiled rice of 361.450 Metric Tons. Respondent No.3 alleged that the petitioner procured more than what it was permitted to procure and exported more than what was permitted to shipment; as such, it has contravened Clause 12 of the Andhra Pradesh Scheduled Commodities Orders. A show cause notice was issued under Section 6-B of the Essential Commodities Act,1955 for which the petitioner has submitted an explanation stating that it was permitted to purchase a total quantity of 11,000 MTs of para-boiled rice from the millers of Andhra Pradesh by the Commissioner of Civil Supplies by Proceedings dated 13-11-1995. Further, the Commissioner of Civil Supplies also granted permission for purchase of 2,250 MTs of rice; thus making a total quantity of 13,250 MTs. The petitioner was also further permitted to procure another 1,000 MTs of rice. Therefore, there is no question of procuring more than what was permitted. The shipment was made only after obtaining permission from the 2nd respondent-Joint Collector, East Godavari District, Kakinada. Rice procured from Madhya Pradesh was transported to Kakinada via Khammam or Vizianagaram depending on the place of procurement and passed the checkposts at the connected places. However, the 2nd respondent ordered confiscation of the entire seized stock to the Government by an Order dated 25-7-1996. Aggrieved by the same, the petitioner preferred an appeal before the 1st respondent, who, however, modified the confiscation order limiting the confiscation to 75% and directed to release 25% of the seized stock. Therefore, the present Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents stating *inter alia* that the Commissioner of Civil Supplies, Andhra Pradesh, Hyderabad issued orders originally to

purchase 10,000 MTs of para-boiled rice for export by the petitioner from Kakinada Port to Bangladesh vide CCS Ref.No.P1/1413/95, dated 23-9-1995. However, the same was revised vide CCS Ref.No.P1/1413/95, dated 4-10-1995 and permission was granted to purchase 6,000 MTs of para-boiled rice from rice millers of Andhra Pradesh for export to Bangladesh from Kakinada Port and 4,000 MTs from outside the State, but the total quantity should not exceed 10,000 MTs as per the revised proceedings. Respondent No.2, thereafter, issued orders in Proceedings No.P2/737/95, dated 11-10-1995 permitting the petitioner to export only 10,000 MTs out of which 6,000 MTs were to be procured from Andhra Pradesh. Thereafter, the Commissioner of Civil Supplies, Hyderabad issued Proceedings CCS No.P1/443/96, dated 6-3-1996 permitting the petitioner to purchase upto a total quantity of 2,500 MTs of rice from the rice millers of Andhra Pradesh against their levy free eligibility. Accordingly, in pursuance of the said proceedings, the 2nd respondent issued Orders permitting the petitioner to purchase 2,500 MTs of rice from Rice Millers in Andhra Pradesh and to allow its shipment vide Proceedings Ref.No.P2/329/96, dated 11-3-1996. Thus, the permission was granted to the petitioner only to procure a total quantity of 8,500 MTs from the Rice Millers of Andhra Pradesh and not more than that. However, the petitioner has informed through its statement that it had purchased the rice of a quantity of 13,754 MTs from Andhra Pradesh and 13,318 MTs from outside (181 MTS from Orissa State and 13,137 MTs from Madhya Pradesh State) totaling to 27,072 MTs. Thus, there is a variation of 5,254 MTs of rice procurement, which was never permitted by the authorities. Respondent No.2 has not given any permission/order to the petitioner for the excessively procured rice of 5,254 MTs. Except the above

permissions, no other permission was granted to the petitioner. The permissions on which the petitioner placed reliance are not genuine and they were not granted by the 2nd respondent. As per the records, the 2nd respondent issued only the following orders for procurement of rice within the State of Andhra Pradesh and for shipment of para-boiled rice for export to Bangladesh

a) 1. P2/735/95, dated 11-10-1995 6,000 MTs
2. P2/329/96, dated 11-3-1996 2,500 MTs

8,500 MTs

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b) 1. P2/32/96, dated 12-2-1996 10,000 MTs

As per the statement field by the petitioner, the shipment of rice from 30-9-1995 to 18-12-1995 was for a quantity of 17,645 MTs, whereas vide Proceedings dated 18-12-1995, the 2nd respondent permitted the petitioner to ship only a quantity of 10,000 MTs of para-boiled rice procured from outside the State. Thus, the petitioner made an excess shipment of 7,645 MTs.

Learned counsel for the petitioner strenuously contended that the allegation that the petitioner was permitted to procure only 8,500 MTs is not true and correct. Petitioner was permitted to procure more than 14,000 MTs of rice as evident from the permits, which were seized by the 3rd respondent. The finding that the shipment was made in excess than authorized by the 2nd respondent is not correct, as the 2nd respondent granted shipment permission for the stock actually shipped and the petitioner filed various documents to prove the same, but the same was erroneously denied by respondents 1 and 2. The finding that no entries were made by the check post authorities in their registers cannot be a ground for confiscation, especially when the invoices were stamped by the authorities and the same were entered

in the books of accounts maintained at the godown by the petitioner. In case it is a clandestine deal, the petitioner would not have entered the same in the registers showing procurement of rice from Madhya Pradesh. The way bills and trip sheets of the lorry seized by the 3rd respondent would also prove the same. Petitioner procured the rice and did not sell the same to anybody except for export to Bangladesh. Therefore, the petitioner cannot be understood as a dealer and there is no evidence that the petitioner sold the entire stocks. There is no question of opening balance or closing balance as the stock is meant for exporting outside the country. The question of hoarding the stock other than for export or the petitioner sold the stock to anybody locally does not arise. Respondent No.3 enquired about this, but could not get any evidence for this. Therefore, the seizure of stocks is only on the basis of mere surmises and conjectures.

Learned Government Pleader reiterated the same stand as was taken in the counter affidavit and additional counter affidavit.

The admitted facts are that the petitioner was permitted to procure para-boiled rice of 10,000 MTs, out of which 4,000 MTs from outside the State and 6,000 MT from within the State of Andhra Pradesh as per the revised Orders. But, the 2nd respondent issued orders permitting to export only 10,000 MTs out of which 6,000 MTs were to be procured from Andhra Pradesh. That means, the petitioner was permitted to procure 6,000 MTs from the State of Andhra Pradesh and 4,000 MTs from outside. Further, on 6-3-1996, the petitioner was permitted to purchase another 2,500 MTs of para-boiled rice from the millers in Andhra Pradesh. Thus, the petitioner was permitted to procure 8,500 MTs from the millers of Andhra Pradesh. However, in the statement filed by the petitioner, it is stated that they have purchased para-boiled rice of a quantity of 13,754 MTs from Andhra

Pradesh and 13,318 MTs from outside i.e. from Orissa and Madhya Pradesh States totaling to a quantity of 27,072 MTs. Thus, there is a variation of 5254 MTs of procurement of rice within the State of Andhra Pradesh. There seems to be no permission granted for the purpose of procuring excess quantity of 5254 MTs of para-boiled rice; whereas, as per the statement of the petitioner, the shipment of rice from 30-9-1995 to 18-12-1995 is 17,645 MTs.

Respondent No.2, through his Proceedings dated 12-2-1996 granted permission to the petitioner for shipment of 10,000 MTs of para-boiled rice purchased from Millers/Traders, Food Corporation of India of other States and Food Corporation of India - Andhra Pradesh. Thus the controversy is as to the discrepancy between the permission to procure para-boiled rice within the State of Andhra Pradesh and the shipment made by the petitioner. There is no dispute that the petitioner was, in all, permitted to procure 8,500 MTs of para-boiled rice as on 4-2-1996. It seems, further, by Circular dated 13-11-1995 issued by the Commissioner of Civil Supplies, Hyderabad in CCS.Ref.No.P1/1888/95, the petitioner was permitted to purchase upto a total quantity of 11,000 MTs on behalf of S.T.C. India limited, New Delhi from the rice millers of Andhra Pradesh against their levy eligibility meant for sale anywhere in the country outside the State for being exported from Kakinada Port to Bangladesh and the Collector was further requested to grant licence to export the said quantity of rice, under the Andhra Pradesh Scheduled Commodities Dealers (Licensing & Distribution) Order,1982. Thereafter, on 29-1-1996 the Commissioner of Civil Supplies addressed a letter to the petitioner permitting to export para boiled rice not exceeding 10,000 MTs. It seems, another 2,250 MTs of para-boiled rice was permitted to be purchased by the petitioner either from the millers/traders/Food

Corporation of India of other States or FCI, Andhra Pradesh and/or both the source and bring them to Kakinada Port for exporting to other countries. Thus, the total quantity permitted to be purchased with effect from 29-1-1996 comes to 12,250 MTs. Whereas, permissions were granted by the 2nd respondent for shipment as under:

1. On 11-10-1995 for 10,000 MTs
2. On 12-12-1995 for 3,132 MTs (purchased prior to 18-11-1995)
3. On 17-12-1995 for 4,160 MTs (purchased prior to 18-11-1995)
4. On 18-12-1995 for 1,708 MTs (purchased prior to 18-11-1995)
5. On 6-1-1996 for 123.560 MTs (purchased prior to 18-11-1995)
6. On 12-2-1996 for 10,000 MTs
7. On 11-3-1996 for 2,500 MTs
8. On 20-3-1996 for 1,300 MTs (470 MTs of raw rice & 830 MTs of boiled rice)
9. On 23-3-1996 for 299.300 MTs (50 MTs of raw rice and 249.300 MTs of boiled rice)
10. On 25-3-1996 for 230 MTs of boiled rice and 820 MTs of raw rice.

Thus, in all, the petitioner was permitted to procure 20,500 MTs within state and 20,250 MTs from outside the State. The sum and substance of the argument advanced by the learned counsel for the petitioner is that the following permits were issued from the Office of the Commissioner of Civil Supplies for procurement of rice for export:

Table "A"

Sl. No.	Permission No.	Within the State A.P. (in MT)	Out of State (in MT)
1	CCS Ref.P1/1413/95/23.09.95	6,000.000	4,000.00
2	CCS Ref.P1/1888/95/13.11.95	11,000.000	--
3	CCS Ref.P1/1910/95/16.12.95	--	4,000.000
4	CCS Ref.P1/36/96/29.01.96		10,000.000

5	CCS Ref.P1/490/96/13.03.96	1,000.000	--
6	CCS Ref.P1/36/96/29.01.96	--	2,250.00
7	CCS Ref.P1/443/96/06.03.96	2,500.000	---
		20,500.000	20,250.000

Further, the Office of the Joint Collector, Civil Supplies, East Godavari, Kakinada had issued the following permits to the petitioner for loading/shipment of rice for export:

Table "B"

Sl. No.	Permission No.	Boiled Rice (in MT)	Raw Rice (in MT)
1	P2/735/95/11.10.95	10,000.000	
2	P2/1413/95/12.12.95	3,132.000	
3	P2/1413/95/17.12.95	4,160.000	
4	P2/1413/95/18.12.95	1,708.000	
5	P2/1413/95/06.01.96	123.560	
6	P2/32/96/12.02.96	10,000.000	
7	P2/329/96/11.03.96	2,500.000	
8	P2/32/95/20.03.96	830.000	470.000
9	P2/391/96/23.03.96	249.300	50.000
10	P2/391/96/25.03.96	230.000	820.00
		32,932.860	1,340.000

Insofar as the granting of the said permits is concerned, there is no dispute. But, insofar as the Order dated 13-11-1995 (item No.2) is concerned, the petitioner is permitted to purchase on behalf of the State Trading Corporation, New Delhi upto a total quantity of 11,000 MTs (Eleven thousand) of boiled rice from rice millers of Andhra Pradesh against their levy free eligibility meant for sale anywhere in the country (outside the State) and export from Kakinada Port to Bangladesh. This, according to the respondents, is the permission given for purchase of para-boiled rice on behalf of State Trading Corporation. Whether it is given on behalf of STC or otherwise, the very permit indicates that 11,000 MTs of rice was permitted to be procured from the rice millers of Andhra Pradesh for being exported

from Kakinada Port to Bangladesh and the District Collector, East Godavari District was directed to grant licence to the exporter i.e. petitioner herein and also permission to store the required quantity for export. This itself shows that this 11,000 MTs of rice was also given for the purpose of export from Kakinada port to Bangladesh.

The shipment permits, as noticed above, would show that, in all, 32932.860 MTs of para-boiled rice and 1340.000 MTs of raw rice was permitted to be exported. However, there is a dispute as to issuance of some of the permits from the Office of the Joint Collector. Except saying that the following permits were not issued by the Office of the Joint Collector, nothing is stated further.

Table "C"

1	P2/1413/95/12.12.95	3,132.000
2	P2/1413/95/17.12.95	4,160.000
3	P2/1413/95/18.12.95	1,708.000
4	P2/1413/95/06.01.96	123.560

The petitioner has furnished details of each and every permit issued from 11-10-1995 to 25-3-1996. The permits shown at items 2 to 5 of Table 'B' (i.e. 'C' Table), as shown above, issued by the 2nd respondent are in dispute. The petitioner has filed the copies of those permits and a bare look at of those permits and the signatures contained therein when compared to the permits accepted and purported to have been issued by the Office of the 2nd respondent, the signature and the tenor of the permits perfectly tallies. The respondents except saying that these permits were not issued by the Joint Collector, no evidence either oral or documentary is produced to show that those permits were not issued by the Office of the Joint Collector.

The confusion seems to have arisen as to whether the permission granted on 13-11-1995 is for procurement within the State

of Andhra Pradesh or outside the State. There is no ambiguity in the Order passed by the Commissioner of Civil Supplies for procuring 11,000 MTs of rice from the rice millers of A.P. Therefore, in all, the petitioner was permitted to procure for the period from 23-9-1995 to 13-3-1996, 20,500 MTs within the State of Andhra Pradesh and another 22,500 MTs, as noticed above, from outside the State. Thus, the petitioner was permitted to procure, in all, 17,000 MTs within the State of Andhra Pradesh as on 13-11-1995. Upto this, there is no confusion. But, what the Department says is that 11,000 MTs of para-boiled rice was permitted to be procured on behalf of STC India Limited from the rice millers of AP and no separate permits were issued by the Joint Collector, East Godavari, Kakinada for procurement of these 11,000 MTs of rice as is ordered by the Commissioner of Civil Supplies. Here, it seems, the authorities have created a confusion and even now, it is not known as to why no permits were granted by the 2nd respondent for those 11,000 MTs of para-boiled rice for shipment. The permits, which were obtained by the petitioner from the Joint Collector at items 2 to 5 (B-Table), as noticed above, would indicate that the permits were obtained for the purpose of shipment of rice. The confusion seems to be that the petitioner firm did not observe as to the account for the stocks, like receipts, issue of stocks for various consignments separately. On the basis of this confusion, the confiscation was ordered. Thus, the confiscation ordered is only on the basis of suspicion and surmises. In all, whether the procurement is from outside the State or within the State, the permission to procure and the permission to export are within the permissible limits. The permit to procure 11,000 MTs of para-boiled rice was not taken into consideration by the authorities. Whether there was any objection from the State Trading Corporation of

India is not known. It is the case of the respondents that the permits obtained for export by the petitioner-firm on its own account and the permits obtained for export on behalf of the State Trading Corporation of India Limited are distinct. May be, they are different, but the very Order dated 13-11-1995 permitting the petitioner to procure para-boiled rice of 11,000 MTs from the millers within the State of Andhra Pradesh on behalf of the State Trading Corporation is only for the purpose of exporting it to outside. Under those circumstances, it cannot be said that the petitioner was not permitted to procure more than 8,500 MTs of rice and as such, the petitioner has committed illegality in procuring more than that and making shipment. May be, the shipment permits as stated by the petitioner are not available in the file of the Joint Collector. In this regard, it may be necessary to notice that there was a change in the Office. One Ramarao seems to have signed "for Joint Collector". The Incharge Officer has issued the Proceedings dated 12-12-1995, 17-12-1995 and 18-12-1995 which are said to be not genuine by the respondents. The signature of the Additional Huzur Head Clerk (P) on the said Proceedings tallies with the signature on the other admitted permits, which were issued by the Joint Collector.

Though the permits issued seem to be genuine, they are being disputed by the respondents for no reason, except saying that those permits are not available in their files. The records produced before this Court would further reveal that the file itself is not properly maintained. There is no proper note file and the details as to how each and every permit was granted are not available. In some cases, the note file itself became the draft permit and this itself would show that the denial of the respondents that certain permits i.e. permits shown at items 2 to 5 above (B-Table), were not issued, cannot be

said to be true. No suspicion can be made as to existence of those permits, when compared to the other permits, which are accepted by the respondents. Further, it is not the case of the respondents that against those disputed permits, any enquiry was conducted and any person was made responsible nor it is their case that the petitioner is not entitled for issuance of such permits.

For all the above reasons, the impugned Order 25-7-1996 passed by the 2nd respondent as modified by the 1st respondent in G.O.Ms.No.530, dated 30-8-1997 is liable to be set aside. Accordingly, the Writ Petition is allowed and the impugned Orders are set aside. The petitioner is entitled for return of the value of the goods confiscated by the respondents. No order as to costs.

15-12-2006

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